THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION No. 3078 of 2005

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Between:

M/s.Kamakshi Cements (P) Limited, Vijayawada, rep. By its Managing Director.

…Petitioner

And

The Government of A.P., rep. By its Secretary, Commercial Tax Department & Others.

….Respondents.

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 3078 of 2005

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

The petitioner claims that he was a *bona fide* purchaser of a property sold by respondent Nos.4 and 5. He submits that the auction notice was initially issued on 9.1.2001 and again on 13.1.2001 and finally on 20.2.2003 and auction was conducted on 3.6.2003. He was the highest bidder and he made the 100% down payment on the day of auction itself. The Board of the 4th respondent confirmed the sale and approved it on 29.12.2003 and proceedings were accordingly issued on 10.3.2004. In the meantime, the Commercial Tax Department issued a notice, which is impugned in this petition, to original assessee on 17.4.2004. A notice was issued to the present petitioner also, on 17.4.2004. The case of the respondents is that since the original owner was in arrears on account of Sales Tax dues, therefore, there was a charge of the Commercial Tax Department over the properties belonging to the original owner i.e. the Dealer.

This question has been considered by this Court in a judgment in ***Damera Ramakrishna & others v. The Commercial Tax Officer (FAC), Suryaraopet & others***, and also by Supreme Court in ***State of Karnataka & another v. Shreyas Papers Pvt. Ltd. & others***.

This Court had held that if the purchaser had no information that the seller of the property was in arrears and there was charge against the property and was a *bona fide* purchaser, he could not be faulted for purchasing the property. In the present case, the petitioner has not purchased the property from the original owner, but it appears that the original owner was in debts of the Financial Institutions– Respondent Nos.4 and 5 and in terms of law, they auctioned the property, which was sold in a public auction. Therefore, in our view, the petitioner was a *bona fide* purchaser of the property and could be given the benefit of the judgments referred to above.

However, the learned Government Pleader submits that the notice was given on 22.4.2004, whereas the sale deed was executed on 26.5.2004, therefore, the petitioner had the information with regard to the charge against the property before he executed the sale deed. That may be true, but the fact remains that the auction had been conducted on 3.6.2003, which had been confirmed by Respondent Nos.4 and 5, which are also Statutory Institutions, and the sale had been approved on 29.12.2003. The petitioner had paid the full

consideration amount as on the date of auction i.e. 3.6.2003. Therefore, in our view, execution of the sale deed on 26.5.2004 would hardly make any difference.

For these reasons, we allow this writ petition and hold that the Commercial Tax Department cannot enforce the liability of the original assessee on the petitioner, who has been a *bona fide* purchaser of the property.

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(BILAL NAZKI, J)

8th March 2006

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(G.CHANDRAIAH,J)

ajr